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Abstract

The purpose of this paper is to set forth some criticisms of faculty senates, the most common type of representation system on US campuses. Faculty senates vary a great deal but are all, in theory and practice, a type of employee council. Historically, employee councils have failed to provide effective leadership and some of their deficiencies are shared by faculty senates: a lack of independent funds, a lack of expertise needed for effective representation, control of internal affairs by the administration (the employer), and lack of recourse to a national structure that could bring pressure to bear upon a recalcitrant administration. Why faculties support such an objectionable system may be explained by the academicians' belief in a distinction between the terms "professional" and "employee." Faculty members have generally confused the line between employment and professional problems--a confusion particularly prevalent in current thinking about entry to professorial positions. The public policy of faculty committees should also be considered. The function of faculty representation should not be faculty administration of an institution, but to ensure that administration is equitable and efficient. If the faculty itself is responsible for administrative action, faculty rights are practically without protection from administrative abuse. (JS)

FACULTY SENATES: A DISSENTING VIEW

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Section 23
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FACULTY SENATES: A DISSENTING VIEW* [1]

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The purpose of this paper is to set forth some criticisms and reservations about faculty senates. In the absence of systematic data about faculty senates, my comments will be devoted largely to questioning some of the basic assumptions underlying academic senates as a representational system. Nevertheless, I would like to emphasize that the data available to me and my own experience fully support the main thrust of this paper. Of course, this may be due to the common tendency to look actively for evidence that supports one's point of view and the equally human but unscholarly tendency to ignore evidence that refutes it. I hope this is not the case, but that is a matter on which others may wish to reserve judgment.

I should also like to emphasize that my comments about faculty senates cannot be attributed to individuals who support them. For example, I happen to believe that faculty senates, as envisaged and actually operative in most institutions, have inherent tendencies toward irresponsibility and totalitarianism. However, I do not mean to suggest that those who advocate faculty senates are irresponsible or totalitarian as individuals, or that their motives are anything other than noble and virtuous. Surely, however, we can agree that even intelligent and nobly motivated individuals may sometimes advocate policies whose practical effects are inconsistent with their sincerely held principles. For this reason, faculty senates are not beyond the pale of critical analysis because intelligent democratically oriented professors espouse them. This point may seem obvious, but it has a special relevancy to the issues to be discussed.

Experience elsewhere in discussing faculty senates leads me to stress one other point at the outset. Criticism of faculty senates does not necessarily lead to espousal of any other specific representational system in higher education. This is so even if it be granted, as many will not, that my criticisms of faculty senates are valid. Other things being equal, a representational system which is not characterized by the valid objections to academic senates is preferable to academic senates. However, more than one alternative might be free of such objections. Furthermore, although other representational systems might be immune from the valid objections to faculty senates, they might be subject to valid

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[1]Some of the views in this paper were presented more fully and in greater detail in "Representational Systems in Higher Education," a paper presented at the Temple University-Phi Delta Kappa Symposium on Employment Relations in Higher Education, November 14-15, 1968. Although only a small portion of that paper is incorporated verbatim in this one, permission to use any part of this paper should be secured from Phi Delta Kappa as well as the American Association for Higher Education. The original paper is now part of a book, Employment Relations in Higher Education, edited by Stanley Elam and Michael H. Moskow and published by Phi Delta Kappa.

criticisms not applicable to the senates. Obviously, this paper does not and cannot deal with such a broad range of possibilities.

In discussing faculty senates, we are probably dealing with the most common if not the prevailing type of the representation system on U. S. campuses. This is only to be expected in view of the fact that the AAUP, ACE, and AGB (the pre-eminent organizations of faculty, administration, and governing boards respectively) officially support the use of faculty senates. Under the circumstances it would be surprising if they were not a common pattern of faculty representation.

Faculty senates vary a great deal with respect to membership, voting structure, legal or constitutional base, scope of authority, and so on. These variations can be very important, but no attempt will be made here to explore them. Instead, faculty senates will be analyzed chiefly with regard to their salient characteristics as representational systems. In doing so, I have tried not to lose sight of the fact that faculties are special kinds of employees and that they are also more than employees. Nevertheless, acceptance of the fact need not and should not preclude us from analyzing faculty senates from the perspective of employment relations. The existence of other perspectives does not justify ignoring this one.

In theory and practice, faculty senates are a type of employee council. Employee councils were fairly common in private employment before the Wagner Act. Historically, they failed to provide effective employee representation for the following reasons:

1. Employee councils lacked funds of their own. Employers provided whatever funds were available, and they naturally did not wish to subsidize a strong employee representative.

2. Employers typically controlled the internal affairs of employee councils. The more serious an issue became, the more likely that the employer would exercise his control over the representation system to impose his views on the employees.

3. Employee councils made no provision for employee appeals from an adverse decision by employers. The employee councils were not organizationally related to higher echelons of employee organization, such as a regional or national organization. There was nobody beyond the employer to whom the employee could appeal, at least without calling into question the basic adequacy of the employee council itself. An adequate employee representation system would envisage the need for outside assistance from time to time. Such assistance should be available through a legally recognized mechanism for employee representation.

4. Employee councils typically put the employees at a psychological disadvantage. Under a council system, employee representatives were employees under the direction and control of the employer. Whereas the employer was represented by persons who devoted full time to employment relations, the employees representatives tended to be inexperienced since they did not work full time at representing the employees. Because the task of representing the employees was superimposed on their full time work, the employee representatives were handicapped in preparing for representational activities.

5. If the employee representatives on the council were chosen from subgroups of employees, there was no employee representative whose constituency includes all the employees. This weakened the moral authority as well as the practical ability of the employee representatives to represent all the employees.

These deficiencies in employee councils are not simply matters of conjecture. They are some of the reasons why employee councils are, in effect, prohibited by federal labor legislation from representing employees on terms and conditions of employment. As a matter of public policy, federal law supports the principle that employees shall be represented by organizations free of employer domination. Since employee councils are likely to be employer dominated, they are prohibited, even if the employees are professionals and desire such a representational system. As a matter of fact, a federal agency which employs physicians or lawyers or other professionals cannot use an employee council similar to a faculty senate for the purpose of representing the employee-professionals on terms and conditions of employment. The reason is not that the nature of the employment situation is so different from higher education. It is that federal policy prohibits a faculty senate type of representational system, even for professional employees, on public policy grounds.

Faculty senates are obviously characterized by at least some of the objectionable features of employee councils. For example, faculty senates typically lack funds independent of those provided by the administration. For this reason, the senates are gravely handicapped in securing the services needed for effective representation. Faculty senates, especially in state and junior colleges, are not likely to have the negotiating, actuarial, accounting, legal, and other expertise needed for effective representation. Furthermore, those faculty members with an expertise useful for representation do not necessarily participate in the academic senate. The individual faculty member may be unable or unwilling to devote his time to securing benefits which are diffused to the entire faculty. Volunteers who may or may not be qualified perform all the specialized services required for effective representation in faculty senates, a factor which considerably weakens their effectiveness.

As in private employment, employers (i.e., administration or governing board), typically control the internal affairs of faculty senates. In many institutions, faculties have worked diligently to incorporate a faculty senate into the official statutes of the institution. Such incorporation is usually regarded as a victory for a "faculty self-government." My view is that such incorporation is more often a step in precisely the opposite direction.

Suppose a board of trustees has approved the structure of a faculty senate; the senate is now recognized as an official component of faculty government. What happens if the faculty subsequently desires to change the structure? They may want to exclude administrative officers or have faculty representatives elected at large instead of by department or college. If such changes must be approved by the administration, the "self-government" is obviously a matter of sufferance, not of right. Its inherent tendency is to be authorized or tolerated only to the point where it threatens no crucial interest of governing boards or administrators. Surely an employee organization operating independently of employer control is more likely than one which is not to press vigorously for joint decision-making in employment relations.

Paradoxically a union of common laborers can change the way it selects its representatives without consulting the employers of common labor. Professors represented through academic senates cannot change the way they select their representatives without employer approval. Nevertheless, the professors supposedly have more "self-government." Surely, if freedom to choose one's representatives is an important element of self-government, and I think it is, faculty senates are a dubious step toward meaningful self-government.

Academic senates are not part of any state or national structure which can bring pressure to bear upon a recalcitrant administration.[2] When an administration finally rejects a senate recommendation, the faculty's options are to accept the rejection or to appeal to an external organization. This situation is clearly inferior to the procedures prevailing in private employment under exclusive representation. In the latter situation, the exclusive representative negotiates a binding agreement on terms and conditions of employment. The employer administers the agreement, but he is effectively precluded from applying it in such a way as to deprive the employees of their rights under the agreement. This is so because the employees typically have the right to appeal to arbitration of such disputes by an impartial third party. Such appeals, which are are relatively expeditious in practice, are part of the recognized structure of employment relations. By contrast, a faculty member or organization who wishes to challenge an adverse decision by his employer must activate local and national organizations which have no legally recognized place in institutional employment relations.

Faculty senates are not characterized by all of the weaknesses of employee councils in private employment. For example, employee representatives in employee councils must ordinarily prepare for their dealings with the employer after the normal work day or on weekends. Apart from the physical burdens involved, the employee representatives find it difficult to communicate with appropriate persons or locate appropriate resources at these times.

This weakness does not apply to faculty members to the same degree that it does to employees in private enterprise. Some institutions of higher education provide released time for representational duties, much as an industrial company releases union shop stewards for union duties on company time. Even without this arrangement, however, faculty members typically have more time to prepare their case than employees operating under an employee council in private enterprise. Faculties are also more likely to include personnel who would not be at a disadvantage psychologically in negotiating with institutional management. Nevertheless, on balance, it appears that the major criticisms levelled against employee councils are valid as applied to faculty senates.

Why do faculties support a representational system characterized by such basic deficiencies? The belief that faculty senates constitute a "professional" (as distinguished from an "employee") approach to faculty representation is undoubtedly part of the explanation. "Employee" is a low status word in academe; in fact, academicians frequently assert that they are not "employees." Thus in the spring of 1968, Bertram H. Davis, the newly appointed General Secretary of the AAUP, stated that:

"Faculty members have rightfully complained when boards or administrators have treated them as employees, and it would be ironic if they were now themselves to perpetuate the employer-employee concept through an industrial style of collective bargaining."[3]

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[2] The California State Colleges have a state-wide academic senate which has just endorsed the principle of collective bargaining!

[3] Bertram H. Davis, "Unions and Higher Education: Another View," Educational Record, Spring 1968 (49), p. 144. The fact that an individual can become the full-time executive officer of the AAUP while denying that professors are employees surely has some implications for the effectiveness of the AAUP as an employee organization.

Such professorial overreactions to their employee status (including the delusion that they are not employees) is based upon the conviction that professional status is inconsistent with employee status. This conviction is clearly fallacious, but it underlies much academic support for faculty senates.

The reason is that most professors fail to understand the distinction between an employment problem and a professional one. Employment problems should be resolved within the context of employer-employee relations; professional problems are those appropriate for action by professional organizations independently of employer action. To illustrate, suppose a physician is frequently late for his appointments. What is the patient's recourse - to report this to the local medical society? Ordinarily such tardiness is not handled this way. If a patient is aggrieved for this reason, he seeks an adjustment from the physician; if he does not get it, he changes physicians. In this context, the patient is an employer and clears up the problem as an employer. Regardless, the matter is not ordinarily referred for action to the physician's professional organizations. It is an employment, not a professional problem. Incidentally, it is remarkable how often professors fail to realize that the fee-taking professionals have employers; in fact, they have many employers. Their situation illustrates the fact that professional autonomy can be compatible with employee status, not that professional autonomy requires the elimination of employee status.

Suppose, however, that the physician has been supplying a dope ring at great profit to himself. In this case, the professional organization would be concerned with the physician's right to practice at all; the problem would be clearly a professional one. Furthermore, the same set of circumstances might constitute both an employment and a professional problem. For example, a physician who operated recklessly might give rise to legal action by his employer, i.e., the patient. Such reckless behavior might also justify disciplinary action by his professional organization. Without attempting a precise categorization, we can say that some actions are clearly employment problems, some are clearly professional problems, and some are both.

In higher education, however, the problem is not where to draw the line. It is the lack of awareness that there is a line to be drawn. As a result, faculties are apt to insist upon "professional autonomy" or "academic self-government" on problems which should be handled as employment problems.

To illustrate, suppose a faculty member habitually appears late for his classes. To regard disciplinary action, if any, as within the scope of "professional autonomy" is to be confused. Such confusion probably stems from the fear that if jurisdiction over such matters is not "professional," i.e., within the faculty's domain, it must be an unbridled administrative prerogative. These alternatives ignore the possibility that the faculty and the institution might negotiate a binding agreement which (1) includes the grounds and criteria for disciplinary action and which (2) is administered by the administration with ample safeguards against administrative violation of the agreement. Thus failure to understand how employee representation systems can and do work to serve professional employees leads many faculty members to deny that they are employees at all. Having abandoned any claim to protection as employees, these faculty members seek such protection as a professional prerogative. In doing so, however, they have thoroughly confused both employment relations and professionalism on the campus.

This confusion is especially evident in current thinking about entry to professorial positions. In effect, autonomy concerning some employment decisions (specifically

those which should be made by the employer on an institution by institution basis) is confused with autonomy concerning professional decisions (e.g., occupation-wide standards for entry to the profession). This confusion is illustrated by the idea that persons should not be appointed to administrative positions (president, dean, etc.) without professorial approval. Many professors regard such approval as an appropriate step toward "professional autonomy" or "faculty self-government." Realistically, the idea strikingly illustrates the pervasiveness of professorial confusion concerning their status as professionals and as employees.

In the first place, such procedures ignore the conflict of interest on the part of faculty members who recommend persons for administrative positions (in this context, meaning those that involve making decisions or effective recommendations concerning faculty employment, retention, promotion, discipline, and so on). Professors are not likely to recommend candidates who advocate curtailing their courses or programs. Most professors would not knowingly recommend anyone known to harbor sincere doubts about the promotional merits of the recommender. Inevitably, faculty members on appointment committees tend to support candidates known or likely to have a favorable view toward the individuals on the committees, or their particular academic projects and objectives.

The conflict of interest remains even if, as sometimes happens, the appointment committee recommends someone whose views on these matters are not known to the committee members. Most college administrators would find it more difficult to make objective personnel decisions about faculty members who vigorously supported or opposed their appointment than about those who did not participate in it.

Stripped of its academic rhetoric, a faculty appointment committee involves all the contradictions inherent in having employees choosing the representatives of the employer. The dangers inherent in this procedure extend far beyond the likelihood that faculty members will recommend on the basis of the expected impact of their own interests. The procedure itself maximizes the possibility that a managerial appointment will be made on the basis of employee interests which are not laid on the table.

The faculty selection committee approach to administrative recruitment puts great reliance upon choosing a "democratic" individual. Faculty rights are not secured by a written agreement on terms and conditions of faculty employment, regardless of the individuals occupying administrative positions at any given time. They are supposedly secured because the faculty, in its wisdom, will choose administrators who will render adversary procedures and written agreements unnecessary.

Apart from the fact that such participation involves various employer-employee conflicts of interest, it fails to provide adequate protection for the faculty. Adequate protection requires adherence to certain personnel policies regardless of who carries them out. To put one's faith in who carries out these policies, while simultaneously failing to insist on their incorporation in an enforceable collective agreement will appear to be a capricious procedure on a growing number of campuses.

Public Policy Considerations

Representational systems in any sector of the economy should be evaluated from the standpoint of the public as well as from the employee and employer standpoints. For this reason, the public policy implications of faculty appointment committees

cannot be ignored.

As previously pointed cut, to permit public employees to select the representatives of the public employer increases the probability that hidden conflicts of interest will play an unhealthy role in the selection process. Beyond this, there are additional and perhaps even more important issues to be raised.

Assume that a board of trustees has agreed to appoint as president only a person recommended by the faculty. Assume also no administrative interference or pressure but ample support for whatever the faculty needs to arrive at a recommendation. Assume, therefore, that the trustees pay all the expenses of faculty participation without stint while agreeing to appoint only from a list approved by the faculty. On most campuses, such an arrangement would be cheered as a great step forward.

Suppose, however, the faculty members on such a presidential appointment committee do a very poor job. Perhaps they do not work hard at it. Perhaps they work their heads off, but their judgment is poor. What happens to them as a result?

Obviously, if the faculty members have recommended a person who turns out to be a disaster, the president so recommended is not going to press the matter. Nor is it likely that the trustees will cite the disastrous recommendation as a reason to deny any benefits to the faculty members who made it.

Paradoxically, a department chairman is usually held responsible for the quality of his recommendations to deans and presidents. If a chairman recommends weak persons for appointment or promotion, this fact is legitimately cited against him in evaluating his own performance and setting his own future level of compensation. We are, therefore, confronted by a most anomalous situation. At the lowest administrative levels, there is accountability for personnel recommendations; one clearly expects the quality of staff recruited by a chairman to be a significant factor in the evaluation of the chairman. But not so for the faculty committee to recommend a president. In my experience, a board of trustees or university president has never cited the poor judgment of a faculty presidential selection committee as a reason to withhold rank or pay to the committee members. Surely, the reason cannot be that the recommendations from such committees are always good ones. It is that faculties are successfully avoiding accountability for their recommendations. Whatever the reason, should our posture be that the more important a recommendation is, the less accountability there should be for it? We ought at least to consider the possibility that the absence of accountability renders faculty appointment committees an irresponsible approach to appointment.

Interestingly enough, the AAUP and the AFT which do not allow active membership to persons whose duties are mainly administrative, nevertheless support procedures whereby the faculty participate in the selection of employer representatives. Perhaps the officers of the AAUP or AFT should be selected from a list submitted by the trustees to the faculty. This would make as much - or as little - sense as having the trustees choose the president from a list submitted by the faculty. In any event, the surprising thing is not that professors confusedly support the procedure - after all, it is difficult to resist the temptation to be a president-maker. It is that so many governing boards have taken this academic rhetoric as seriously as they do.

Academic Senates and Efficiency

It is Holy Writ on most campuses that professors want to participate in decision-making. Typically, participation means that a faculty committee must be established to deal with a problem. No faculty committee, no faculty participation - such is Revealed Truth in higher education. Truth or not, the upshot is a tremendous diffusion of faculty energies to administrative matters, e.g., parking, scheduling, and so on.

In my view, the function of faculty representation should not be faculty administration of an institution. Rather, it should be to ensure that administration is equitable and efficient. The way to achieve this objective is not to have the faculty choose the administrators or to administer the institution. It is to incorporate equitable and efficient administrative procedures in a contractual agreement between the faculty and the governing board. A grievance procedure culminating in binding arbitration by an impartial third party should be available to process a claim that the administration has violated or misapplied these procedures. Under such an agreement, faculties would undoubtedly devote less of their time and energies to administration than they do now under faculty senates. Perhaps that is one reason why some faculty members who enjoy the administrative game are so adamantly opposed to leaving administration to administrators, albeit pursuant to written collective agreements that maximize effective and equitable administration.

In many other areas of employment, the employee representation system is neither designed nor intended to shift the burden of administration from the employer to the employees. On the other hand, the rights of the employees are protected because they are spelled out in a contractual agreement with impartial arbitration as the terminal point of the grievance procedure. If, therefore, the issue is whether a dismissal was for just cause, the employee's protection is not that his fellow employees process the charges and sit in judgment on them. It is that the employer must follow the standards and procedures embodied in the collective agreement; any failure to do so can be challenged through a grievance procedure in which the employer must ultimately prove his case to an impartial third party. Similarly, the function of faculty representation systems and of faculty organizations should not be to administer the institution. The function should be to achieve agreements with employers on how administration should be carried on and to enforce such agreements where enforcement is necessary.

Paradoxically, despite all the rhetoric about faculty self-government and professionalism, the vast majority of professors have not more but less protection against arbitrary and unfair employer action than the vast majority of employees under contractual collective agreements. Such agreements are more likely to provide effective representation than delegated authority which can be revoked or ignored under pressure. Another reason requires that we reexamine the mystique of faculty participation.

The prevailing philosophy is that faculty protection lies in faculty self-government and faculty participation in personnel decisions. However, faculties and faculty organizations and academic senates are hardly immune from prejudice and self-interest and error; these are not administrative monopolies. The issue, then, is this: if the faculty exercises effective authority on personnel decisions, how are faculty members protected against unjust action by the faculty?

Under a faculty senate, such protection is virtually non-existent. The logic of the faculty senate approach is that a decision is right because it is made by the faculty. If this interpretation seems unfair, the answer is simple. If the rightness of a decision depends upon the standards and procedures involved in making it, then those standards and procedures should be binding upon anyone who has to make the decision, regardless of how that person or group is selected. But this view logically leads to a contractual approach through an exclusive representative, not to a faculty senate.

The point here is simple but fundamental. If the role of a faculty organization is not one of administration but of ensuring that administration is equitable and efficient, there is, at least in theory, an organization in being whose raison d'etre is the protection of faculty rights from arbitrary or unjust administration. But if the faculty itself is responsible for the administrative action, faculty rights are practically without protection from administrative abuse.

Because faculty members are employees, their organizations should serve protective functions. These should not be its only functions, but they are important ones. However, if a faculty senate assumes the functions of the employer, where does the aggrieved faculty member go for assistance? Surely not to the AAUP, since the association's test of due process and equity in employment relations is largely whether the faculty make the decision being challenged. Beyond this, the AAUP merely recommends that "the terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated." The association does not, however, recommend that these terms and conditions of employment include the teacher's contractual rights of access to his personnel file, that evaluation reports about him by administrators be routinely made available to him for his information and reaction, and that complaints and criticisms about him from any source that may bear upon his status be brought to his attention. Thousands of public school teachers have these and other protections as routine contractual rights; on the other hand, unless a personnel decision involves tenure, the AAUP has no rationale for involvement, and not even then if the faculty made the decision challenged. I suggest that the end of this non-program for effective faculty representation may be closer than its diehard supporters realize.

Summary and Conclusions

Let me now try to summarize the preceding analysis. Essentially, the analysis has been devoted chiefly to academic senates. Its major conclusion is that faculty senates are subject to the deficiencies of employee councils for these reasons:

1. Faculty senates rely upon the employer for funds and facilities. Thus they have inherent limitations on aggressive representation of faculty interests.
2. The structure of faculty senates is subject to approval by institutional governing boards and/or administrators. Faculties should not permit the mechanics of their representational agency to be subject to employer approval.
3. Faculty senates lack accountability. Faculty members assert that teaching and research competence should be the standards of personnel functions that vitally affect the integrity and effectiveness of their institutions. It is practically impossible for faculty senates to provide for faculty accountability in matters of personnel administrators.
4. Faculty senates tend to place faculty representatives at a psychological disadvantage in dealing with institutional administrators.

5. Faculty senates increase the probability that faculties will lack experienced full time representatives supported by the wide variety of supporting services and personnel needed for effective representation.

6. Faculty senates make no provision for appeals outside the structure of the institution. Since the senates are not part of any larger representational system, any such appeals are inherently outside the scope of institutional representation.

7. Faculty senates which exercise personnel functions tend to deprive faculty members of protection against abuse in the exercise of such functions. An employee organization is needed to protect faculty against certain kinds of employer action. If the employer delegates such action to the employee organization, no agency serves the protective functions of an employee organization.

I am well aware of the fact that my comments did not consider many of the arguments often raised in support of faculty senates. At the same time, they omitted many of the criticisms which can legitimately be made of the theory and practice of the senates. Let me conclude, therefore, with two final comments.

The first is that this paper should not be construed as a criticism of all academic senates, regardless of structure or purpose. As far as being the mechanism for representing faculties on terms and conditions of employment, I think their future is behind them. This should not be construed as either a prediction that all faculty senates will decline, or as a policy statement that it would be desirable if all faculty senates disappeared.

My second and final comment is this. One of our crucial needs in higher education is an end to the uncritical approach to faculty self-government, especially to faculty senates. Most discussion on these topics is characterized by ready resort to theological incantations instead of data. Perhaps our problem is that research is supposed to be done by professors, and professors find it difficult to research the possibility that what's good for professors isn't necessarily good for the country. Whatever the reason, a day of reckoning for faculty senates is close at hand in many institutions.